

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

DERRICK BENNING,

Petitioner(s),

vs.

WARDEN, LEBANON CORRECTIONAL
INSTITUTION,

Respondent(s).

Case Number: 1:06cv862

District Judge Susan J. Dlott

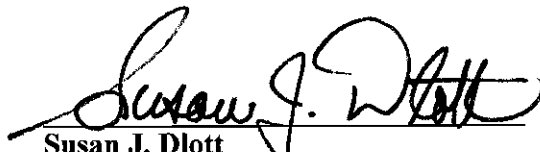
ORDER

This matter is before the Court pursuant to the Order of General Reference in the United States District Court for the Southern District of Ohio Western Division to United States Magistrate Judge Michael R. Merz. Pursuant to such reference, the Magistrate Judge reviewed the pleadings and filed with this Court on February 15, 2008 a Report and Recommendation (Doc. 17). Subsequently, the petitioner filed objections to such Report and Recommendation (Doc. 18).

The Court has reviewed the comprehensive findings of the Magistrate Judge and considered de novo all of the filings in this matter. Upon consideration of the foregoing, the Court does determine that such Recommendations should be adopted.

Accordingly, Petitioner is **GRANTED** a certificate of appealability as to his claims that it was ineffective assistance of appellate counsel to fail to raise a *Blakely* claim on direct appeal and failure to claim ineffective assistance of trial counsel for trial counsel's failure to make a *Blakely* claim in the trial court. In all other respects, the Application for Certificate of Appealability is **DENIED**.

IT IS SO ORDERED.


Susan J. Dlott
United States District Judge